

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC., )  
individually and on behalf of NORFOLK )  
& PORTSMOUTH BELT LINE )  
RAILROAD COMPANY, )  
                                )  
*Plaintiff,* )  
                                )  
v. )  
                                )  
                                )  
NORFOLK SOUTHERN RAILWAY )  
COMPANY, NORFOLK & )  
PORTSMOUTH BELT LINE RAILROAD )  
COMPANY, JERRY HALL, THOMAS )  
HURLBUT, PHILIP MERILLI, and )  
CANNON MOSS, )  
                                )  
*Defendants.* )

No. 2:18-cv-530

**DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S  
MOTION TO DISMISS, FOR JUDGMENT ON THE PLEADINGS, AND FOR  
REFERRAL OF ISSUES TO THE U.S. SURFACE TRANSPORTATION BOARD**

For the reasons set forth in the accompanying brief, Defendant Norfolk Southern Railway Company (“NSR”), by counsel, moves for dismissal and for judgment on the pleadings on Counts I-IV (antitrust claims), Count VIII (statutory business conspiracy), and Count IX (civil conspiracy) of the Complaint under Rule 12(b)(1) and/or Rule 12(c) of the Federal Rules of Civil Procedure. NSR also moves the Court to refer one or more issues to the U.S. Surface Transportation Board (“STB”) and to stay this case pending the STB’s determination of those issues.

WHEREFORE, NSR respectfully requests that this Court grant this Motion and enter an Order:

1. Dismissing with prejudice Counts I, II, III, IV, VIII, and IX of the Complaint because NSR is exempted from liability under 49 U.S.C. § 11321(a) and because only the STB can grant CSXT access to NIT under 49 U.S.C. § 11102(a); to the extent the Counts are not dismissed, refer to the STB for determination the

- following dispositive issue: Whether the STB authorized NSR's control of NPBL in conjunction with the STB's approval of the Merger;
2. Dismissing with prejudice CSXT's request for relief under all Counts that the Court enter an order directing NPBL to approve CSXT's Service Proposal;
  3. Referring to the STB for determination the following issue, which is essential to all Counts: Whether the \$210 line haul switching rate contained in NPBL's Switching Tariff 8100-J is unreasonable; and
  4. Staying this case in its entirety pending the STB's determination of the issue(s) referred to it by this Court.

Date: January 31, 2020

Respectfully submitted,

**NORFOLK SOUTHERN RAILWAY COMPANY**

/s/ Michael E. Lacy

Alan D. Wingfield (VSB No. 27489)

Michael E. Lacy (VSB No. 48477)

TROUTMAN SANDERS, LLP

1001 Haxall Point

Richmond, Virginia 23219

Tel. (804) 697-1200

Fax (804) 698-6061

[alan.wingfield@troutmansanders.com](mailto:alan.wingfield@troutmansanders.com)

[michael.lacy@troutmansanders.com](mailto:michael.lacy@troutmansanders.com)

John C. Lynch (VSB No. 39267)

Kathleen M. Knudsen (VSB No. 90845)

TROUTMAN SANDERS LLP

222 Central Park Avenue, Suite 2000

Virginia Beach, VA 23462

Telephone: (757) 687-7759

Facsimile: (757) 687-7510

Email: [john.lynch@troutman.com](mailto:john.lynch@troutman.com)

Email: [Kathleen.knudsen@troutman.com](mailto:Kathleen.knudsen@troutman.com)

*Counsel for Defendant Norfolk Southern Railway Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2020, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which sent a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

Robert W. McFarland, Esq.  
Benjamin L. Hatch, Esq.  
E. Rebecca Gantt, Esq.  
McGuireWoods LLP  
World Trade Center  
101 West Main Street, Suite 9000  
Norfolk, Virginia 23510-1655  
Telephone: (757) 640-3716  
Facsimile: (757) 640-3930  
[rmcfarland@mcguirewoods.com](mailto:rmcfarland@mcguirewoods.com)  
[bhatch@mcguirewoods.com](mailto:bhatch@mcguirewoods.com)  
[rgantt@mcguirewoods.com](mailto:rgantt@mcguirewoods.com)

*Attorneys for CSX Transportation, Inc.*

James L. Chapman, IV, Esq.  
W. Ryan Snow, Esq.  
Darius K. Davenport, Esq.  
David C. Hartnett, Esq.  
CRENSHAW, WARE & MARTIN, P.L.C.  
150 W. Main Street, Suite 1500  
Norfolk, Virginia 23510  
Telephone: (757) 623-3000  
Facsimile: (757) 623-5735  
[jchapman@cwm-law.com](mailto:jchapman@cwm-law.com)  
[wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com)

*Attorneys for Norfolk and Portsmouth Belt Line Railroad Company*

Hugh M. Fain, III, Esq.  
M. F. Connell Mullins, Jr., Esq.  
John M. Erbach, Esq.  
SPOTTS FAIN PC  
411 E. Franklin St.  
Richmond, VA 23219  
Telephone: (804) 697-2000  
[hfain@spottsfain.com](mailto:hfain@spottsfain.com)  
[cmullins@spottsfain.com](mailto:cmullins@spottsfain.com)  
[jerbach@spottsfain.com](mailto:jerbach@spottsfain.com)

*Attorneys for Jerry Hall, Thomas Hurlbut, and Philip Merilli*

W. Edgar Spivey, Esq.  
Clark J. Belote, Esq.  
KAUFMAN & CANOLES, P.C.  
150 W. Main Street, Suite 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3196  
Facsimile: (888) 360-9092  
[wespivey@kaufcan.com](mailto:wespivey@kaufcan.com)  
[cjbelote@kaufcan.com](mailto:cjbelote@kaufcan.com)

*Attorney for Cannon Moss*

/s/ Michael E. Lacy

Alan D. Wingfield (VSB No. 27489)

Michael E. Lacy (VSB No. 48477)

TROUTMAN SANDERS, LLP

1001 Haxall Point

Richmond, Virginia 23219

Tel. (804) 697-1200

Fax (804) 698-6061

[alan.wingfield@troutmansanders.com](mailto:alan.wingfield@troutmansanders.com)

[michael.lacy@troutmansanders.com](mailto:michael.lacy@troutmansanders.com)

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